

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: March 28, 2019

527013

In the Matter of KARLA FF.,
Respondent,

v

MEMORANDUM AND ORDER

ROBERT FF.,
Appellant.

Calendar Date: February 11, 2019

Before: Garry, P.J., Lynch, Clark, Devine and Pritzker, JJ.

Kalter, Kaplan, Zeiger & Forman, Woodbourne (Terry S. Forman of counsel), for appellant.

Strauss & Kallus, PLLC, Goshen (Barbara J. Strauss of counsel), for respondent.

Pritzker, J.

Appeal from an order of the Family Court of Sullivan County (McGuire, J.), entered September 22, 2017, which, in a proceeding pursuant to Family Ct Act article 8, denied respondent's motion to dismiss the petition.

Petitioner (hereinafter the wife) and respondent (hereinafter the husband) are married and have a divorce action pending. As relevant here, in July 2017, the wife filed this family offense petition and requested an order of protection. The husband thereafter filed a motion to dismiss the petition and requested that he be awarded counsel fees, which the wife

opposed. Family Court denied the motion and the husband now appeals.

Pursuant to the Family Ct Act, with exceptions not relevant here, a party may only appeal as of right from a final order (see Family Ct Act § 1112 [a]; Matter of Kristie GG. v Sean GG., 168 AD3d 25, 27 n 1 [2018]; Matter of Kayson R. [Christina S.], 166 AD3d 1346, 1346 n 2 [2018]). As the denial of the husband's motion to dismiss is an intermediate order, an appeal does not lie as of right; accordingly, his appeal must be dismissed (see Family Ct Act § 1112 [a]; Matter of Timothy GG. [Meriah GG.], 163 AD3d 1065, 1067 [2018], lv denied 32 NY3d 908 [2018]; Matter of Justyce HH. [Shannon HH.], 151 AD3d 1216, 1216 [2017]). We note that, while this appeal was pending, a nonjury trial was held resulting in a January 17, 2018 order granting the wife's petition. An appeal from this dispositional order would bring up for review the denial of this motion to dismiss (see Matter of Kristie GG. v Sean GG., 168 AD3d at 27 n 1).

Garry, P.J., Lynch, Clark and Devine, JJ., concur.

ORDERED that the appeal is dismissed, without costs.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court